## REMARKS

Claims 1-21 are pending in the present application. All of the claims are under a final rejection as anticipated by U.S. Patent 6,516,245 (Dirksing et al.) and/or obvious over Dirksing et al. in view of U.S. Patent No. 5,718,268 (Muscara)

By this Amendment, claim 1 is amended to clarify that the communications module receives data of the mixing formula.

Claims 12 and 19 are amended herein to clarify that <u>mixing formula</u> data is updated in the local memory unit.

For the reasons set forth in detail hereinafter, reconsideration and allowance of claims 1-4 and 5-21, as amended, are respectfully requested.

In numbered paragraph 2, on page 2 of the Office Action, independent claim 1, and dependent claims 6-7, 10-11, 14-16 and 19, are rejected as being anticipated by Dirksing et al.

In numbered paragraph 4, on page 3 of the Office Action, dependent claims 2-5, 9, 12, 13, 17, 20 and 21 are rejected as being obvious over Dirksing et al.

At page 6, lines 7-8, of the Office Action, dependent claims 8 and 18 are rejected as being unpatentable over Dirksing et al. in view of Muscara.

These rejections are respectfully traversed.

Applicant has disclosed a device and a method of operating the device, which serve to mix substances, especially coloring substances, with high precision in a simple manner (e.g., paragraph [00011]). For example, the device has a processor unit, a local memory unit for storing mixing formulas, a display unit, and an input unit, as well as a measuring device, in particular a scale, with which portions of

substances in quantities determined according to a mixing formula can be filled manually or automatically into a container (e.g., paragraphs [00012] and [00014]).

A feature of the device is the display unit which is provided so that reference and actual values, and/or a difference of the reference and actual values, are visualized on the display unit. This provides, inter alia, for accurate manual addition of the substances to be mixed.

The processor unit is connected to a communications module, with which a wireless communications connection to a data server is established regularly or as needed, via which the data of mixing formulas can be transmitted to the local memory unit (e.g., paragraph [00013]). In this manner, the mixing formulas, any notes regarding manufacture and use of the mixtures and, if need be, also operating programs, can be kept at an up-to-date status, and other transfer of data, is therefore obviated.

The measuring device is used in a feedback loop, for example, by a user reading the actual measuring value from a display and dosing the substance manually, or alternatively, by technical means when dosing automatically (e.g., paragraph [00014]).

The device and the method for operating the device therefore allow a user to call up constantly up-to-date mixing formulas directly on the mixing device and then to start a mixing process, or perform a mixing manually while observing the display of the measuring device (e.g., abstract).

The foregoing features are broadly encompassed by amended claim 1, which recites, among other features, a device for mixing substances, comprising a processor unit; a local memory unit to store mixing formulas; a display unit and an

input unit operably connected with the processor unit; a measuring device, wherein the processor unit is connected to a communications module for establishing a wireless communications connection wirelessly to a data server for a time period, regularly or as needed, for receiving data of the mixing formulas is transmitted to the local memory unit and used to control the measuring device.

Claim 10 recites a method of operating a device according to claim 1, wherein the device regularly or as needed creates wireless communication connections to a data server, and on each occasion, up-to-date data of mixing formulas are transmitted to the local memory unit of the device.

The Dirksing et al. patent discloses customizing cosmetics for use by a consumer (abstract). The consumer provides selection data, via one or more input selection means, among them a communications port 200 permitting the device to receive consumer selection data (e.g., col. 4, lines 39-43). A single line LCD can be provided to permit the consumer to enter the selection data as a numeric value. Hence, the consumer enters the pertinent data, i.e., selection data, from which a mixing formula is calculated (e.g., col. 4, lines 44-47). The system may provide prepackaged selection data made available to the customer via numeric code (e.g., col. 4, lines 61-67). Customers may retrieve such codes via an automated phone system or an internet web site (e.g., col. 5, lines 1-10).

Dirksing et al. do not disclose or teach a display unit on which a mixing formula is selected and called up from the memory unit, and that reference and actual values, and/or a difference of the reference and actual values, are visualized. The single line LCD is provided to "permit" the consumer to "enter" the selection data as a numeric value. The LCD is not disclosed or taught as displaying any values

related to the mixing formulas utilized by the microprocessor to create the cosmetic

products.

Dirksing et al. do not disclose or teach either the input of, or the updating of,

any "formulas" utilized by the microprocessor to create the cosmetic products.

Dirksing et al. explain (e.g., col. 4, lines 39-43) that the user/consumer inputs only

the aforesaid "selection data" which consists of **a numeric value that represents**

**the color and the type of cosmetic product**, such as lipstick, eye liner, lotion,

powder, mascara, and the like. This is the only type of input data described or

taught in Dirksing, et al. As to how the cosmetic product is created based upon such

selection data, Dirksing et al. provide the following:

> Once the consumer has determined the selections for his/her customized
> cosmetic product, the proportions of the base ingredients will be known.
> Calculating the proportions of known base ingredients necessary to create a
> specific type (product selection) of cosmetic product is well known and readily
> ascertainable to those skilled in the art. Moreover, creating the appropriate
> color shading of the cosmetic product is trivial, once the consumer has made
> his/her color selections. The appropriate ingredient proportions are calculated
> in step 30.

(col. 3, lines 34-38, emphasis added)

> The consumer provides selection data which will drive the required fluid
> quantities necessary to produce the customized cosmetic product 180.

(col. 4, lines 39-41, emphasis added)

> After selection data is received by the microprocessor 230 in device 225,
> signals are sent to the cartridges 235 via a data bus 240. The signals drive
> the cartridges 235 to release the fluids in the appropriate quantities which are
> dictated by the selection data input to the microprocessor 230. The
> microprocessor 230 uses calculations, which are well known to one skilled in
> the art, **for producing a formula** which selects the appropriate quantities of
> the fluids contained in the cartridges 235.

(col. 5, lines 55-63, emphasis added)

Thus, Dirksing et al. plainly describe that the only input to the device is consumer selection data corresponding to color and product type. According to the portions of Dirksing et al. reproduced above, the microprocessor "uses calculations, which are well known to one skilled in the art, for producing a formula" to create the product corresponding to the input selection data. According to the first quote, "Calculating the proportions of known base ingredients necessary to create a specific type (product selection) of cosmetic product is well known and readily ascertainable to those skilled in the art." Dirksing et al. use "formulas" which are well known in the art for converting the consumer input selection data into the desired type (and color) of product. Dirksing et al. are otherwise completely silent as to these formulas.

Dirksing et al. thus rely on standard, known formulas, and do not discuss or teach that such formulas can either (1) be "input" into the microprocessor or (2) that up-dating those formulas can be accomplished by input to the microprocessor. It is not disclosed in Dirksing et al., and there is no suggestion, that the underlying formulas (which are said to be well known) are in any way altered, revised, or otherwise "up-dated" to ensure that the "latest" "up-to-date" formula is constantly utilized by the microprocessor.

Therefore, Dirksing et al. do not disclose or teach connecting the processor unit of the device for mixing substances to a data server for a certain time, e.g., regularly or as needed, and transmitting data of the mixing formula to the local memory, as claimed.

At page 3 of the Office Action, lines 11-13, the Examiner states "In regards to claim 11, when a new formula is introduced to the device 130 it is a modifying formula replacing the existing formula." This is inconsistent with the system

described in Dirksing, et al, as evidenced by portions of that patent which are reproduced above.  Only the consumer "selection data" can be altered.

There is no disclosure or suggestion in Dirksing et al. that the basic underlying (conventional) formulas which are used by the microprocessor to convert the selection data into the corresponding cosmetic product are ever altered in an way.  The same formulas are utilized to create different cosmetic products-- only the consumer selection data changes.

At page 4, in the last paragraph, the Examiner suggests that "the LCD (not shown) can be used to display a reference value of an original color formula and an actual modified formula after the original formula has been changed by a user."  Although it may be possible to display other information on the LCD, there is no disclosure, teaching or suggestion in Dirksing et al. to actually visualize such information on the LCD.  In Dirksing et al., the purpose of the device is to provide custom made cosmetics for the consumer.  Nothing in that patent suggests that the consumer has any interest in the particular formula used to create the cosmetics.  Thus, there is no suggestion or motivation to provide such information on the LCD, as recited in claim 1.

Dirksing et al. also do not disclose or suggest a communication module for establishing a wireless connection to a data server for a time period.  The Dirksing et al. patent discloses that the "consumer provides these selection data via one or more input selection means ..." (col. 4, lines 44-45).  One of those means is the communications port.  The Dirksing et al. patent discloses that the "communications port permits the device to receive consumer selection data from devices such as digital phones, computers, hand-held computing devices, wireless communication

devices and the like" (col. 4, lines 50-54). Hence, the user is providing selection data to the apparatus via one of the listed devices.

As disclosed in col. 5, lines 1-10, the making available of prepackaged selection data via the Internet is a separate process, independent from entering selection data into the mixing apparatus. Fig. 1 of the Dirksing et al. patent shows consumer input of selections from computing devices or on computer readable medium in a microprocessor environment (col. 3, lines 26-33).

In contrast, as presently claimed, a processor unit of the device for mixing substances is connected to a data server for a certain time, e.g., regularly or as needed, and data of the mixing formula is transmitted to the local memory during the duration of the established connection. The Dirksing et al. patent does not teach or suggest transmission of a mixing formula from a (remote) data server to a memory unit for a time period as claimed.

For at least the reasons discussed above, independent device claim 1, as amended, and dependent method claim 10 are patentable over Dirksing et al.

Applicant's other dependent claims are also allowable. For example, regarding claim 2, the Dirksing et al. patent does not teach or suggest a communications module operating according to at least one mobile radio protocol or/and according to at least one Wireless Local Area Network protocol, being suitable for establishing communications connections. Claim 2 encompasses a communications module capable of establishing a wireless connection on its own. The Dirksing et al. patent does not teach or suggest such a communications module capable of establishing a connection.

Regarding claims 12 and 19, .At page 5, second full paragraph, the Examiner states that "it is obvious that updating of the data in the local memory takes place a) before a start of a mixing process; b) at a predefined or at selectable time intervals; c) in response to manual control, or; d) in response to being initiated by the data server from the internet."

Claims 12 and 19 are amended herein to clarify that the mixing formula data is updated. Dirksing et al. do not describe or teach updating, or in any way altering, the underlying formulas used by the microprocessor to create the cosmetic products based upon the selection data.

In regard to claims 5 and 16, the Dirksing et al. patent does not teach or suggest, among other claimed features, that reference and actual values, and/or a difference of the reference and actual values, are visualized on the display unit, such as for manual addition of the substances to be mixed. As explained previously, Dirksing et al. disclose only a single line LCD to "permit" the consumer to enter the numeric values for the selection data, and do not suggest displaying any values relating to formulas for mixing the substances. Thus, Dirksing et al. do not disclose or teach a visualization of a measuring value for display as claimed.

The Dirksing et al. patent discloses supplying a preset quantity of substance under the control of a processor, but does not teach or suggest a measuring device used to determine the quantity while the substance is supplied. Further, the Dirksing et al. patent does not teach or suggest altering the formula. Rather, as disclosed by the Dirksing et al. patent, once the consumer has entered a selection data, the ingredient proportions are calculated. The consumer can only choose another

product or vary the color (e.g., col. 3, lines 34-54). Accordingly, the Dirksing et al. patent discloses direct control that does not involve feedback.

The Muscara patent does not cure the deficiencies of the Dirksing et al. patent. The Muscara patent is cited for disclosure of an apparatus for dispensing liquid which has a scale 17 (abstract; Figs. 2 and 4), but does not teach or suggest the aforementioned claim features.

For these additional reasons, Applicant's independent device claim 1, as amended, along with dependent method claim 10, are allowable. The remaining claims, as amended, depend from the independent claim and recite additional advantageous features which further distinguish over the documents relied upon by the Examiner.

All objections and rejections raised in the Office Action having been addressed, it is respectfully submitted that the application is in condition for allowance and a Notice of Allowance is respectfully solicited.

Respectfully submitted,

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